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**From:**

**Sent:** Friday, February 25, 2011 2:51:57 PM

**To:**

**Cc:**

**Subject:** Advice for

If I understand the facts correctly, the IRS has assessed a penalty under section 6651 against the taxpayer on the theory that the withholding she claimed on her return was not paid by her employer to the IRS, and therefore she failed to pay the amount shown as tax on her return. It appears from the information you shared with me that the examiner somehow thinks the deemed paid rules of IRC section 6513 are relevant here; however section 6513 only comes into play when you are applying the statute of limitations on claims for refund and are trying to determine when a particular payment of tax has been made. Here is the relevant law:

- Section 3402 provides that every employer making a payment of wages must deduct and withhold income taxes from wages (commonly referred to as federal income tax withholding).
- When an employer withholds federal income tax pursuant to section 3402, the amount withheld is allowed to the recipient of the income as a credit against any income tax due to the IRS. IRC § 31. The term "recipient" for purposes of receiving credit for federal income tax withholding is defined as "the person subject to tax imposed under subtitle A upon the wages from which the tax was withheld." Treas. Reg. § 1.31-1(a).
- The recipient (in this case, your taxpayer) is entitled to the credit for any amount withheld, regardless of when, or whether, the tax has been paid over to the IRS. See Treas. Reg. § 1.31-1(a) ("If the tax has actually been withheld at the source, credit or refund shall be made to the recipient of the income even though such tax has not been paid over to the Government by the employer.")

Let me know if you need any further assistance getting this case resolved.